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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE:B-206922

DATE: July 27, 1982

MATTER OF: Diesel-Electric Sales & Service,  
Inc.

## DIGEST:

1. Unsupported allegation that RFP specifications are incomplete and ambiguous does not meet protester's burden of affirmatively proving its case.
2. Mere presence of risk in solicitation does not make it inappropriate.
3. Protest against award made more than 3 years ago is untimely.
4. Protest based upon alleged impropriety in an RFP which is apparent prior to the closing date for receipt of proposals must be filed prior to the closing date.
5. Protest concerning the small business size status of an offeror is a matter for Small Business Administration and not GAO.

Diesel-Electric Sales & Service, Inc. (DESS), and Marine Power Associates (MPA) protested against the specifications in request for proposals (RFP) NOO244-82-R-1275 issued by the Naval Supply Center, San Diego, for overhauling certain Woodward governors and related hydraulic and mechanical components over a 1-year period and two option years. Subsequently, MPA withdrew from the protest.

DESS contends that the specifications are incomplete and ambiguous. DESS fails to show where these deficiencies exist in the specifications. The contracting agency responds that, in a requirement to overhaul governors and related equipment over a long period of time, it is not possible to anticipate and detail all the task requirements and kinds of labor there will be. Therefore, the contracting agency

indicates that it specified the work in detail to the extent that it could be anticipated and that it left it for the offerors to exercise judgment as to what the overhaul work would be in other respects. The contracting agency advises that it received two proposals for the procurement, both of which complied with the RFP.

We deny the protest.

A protester has the burden of affirmatively proving its case. Salmon River Lumber Company, B-202933, January 5, 1982, 82-1 CPD 9. DESS's unsupported allegation does not meet the burden. Salmon River Lumber Company, supra. Further, there is no legal requirement that competition be based on plans and specifications which state work in detail so as to completely eliminate the possibility that the contractor will be required to perform work other than that specified in the solicitation. Klein-Sieb Advertising and Public Relations, Inc., B-200399, September 28, 1981, 81-2 CPD 251. The mere presence of risk in a solicitation does not render the solicitation improper. Klein-Sieb Advertising and Public Relations, Inc., supra; Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD 116. Moreover, since there were two offerors who found the RFP adequate for preparation of proposals, it does not appear that the specifications inhibited competition or prevented offerors from preparing proposals properly. Klein-Sieb Advertising and Public Relations, Inc., supra.

DESS supplemented its original protest to protest an award made in March 1979 under solicitation NO0244-78-R-0018. A protest against an award made more than 3 years ago is untimely under our Bid Protest Procedures. See 4 C.F.R. § 21.2 (1982). Accordingly, that protest is dismissed.

In the supplemental protest, DESS notes that the RFP it originally protested (NO0244-82-R-1275) is set aside for small business and contends that Woodward Governor Company is the only one that can qualify as a small business under the size standard in the RFP.

To the extent that DESS may be protesting that the procurement is being set aside for a single offeror, the protest coming after the receipt of proposals is untimely. A protest based upon an alleged impropriety in an RFP which is apparent prior to the closing date for the receipt of proposals must be filed before the closing date. 4 C.F.R. § 20.2(b)(1) (1982). To the extent that DESS may be protesting an award to anyone other than Woodward Governor Company on the basis that no one else is a small business, the protest is not for our consideration. Under 15 U.S.C. § 637(b)(6) (1976), the Small Business Administration has the authority to make conclusive determinations on matters of small business size status. Check-Mate Industries, Inc., B-207705, June 11, 1982, 82-1 CPD ; Transcon Associates, Inc., B-204991, April 20, 1982, 82-1 CPD 361. Therefore, this aspect of the protest is dismissed also.

*for* *Milton J. Arnold*  
Comptroller General  
of the United States